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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ZENGA, INC., d/b/a King Ice, a California corporation;

Plaintiff,

v.

RAFAELLO & COMPANY, INC., a New York corporation; and DOES 1-10, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES, RESTITUTION, AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiff Zenga, Inc. dba King Ice ("King Ice," or "Plaintiff") hereby complains against Defendants Rafaello & Company, Inc. ("Rafaello) and Does 1-10 inclusive (collectively referred to as "Defendant") as follows.

SUMMARY

1. King Ice is a Los Angeles jewelry brand rooted in hip hop and "street wear" themes. Since 2005, the Company has earned its position as the leader in this huge and burgeoning market with innovative design and high-quality craftsmanship. Some of its pendant designs are shown below.

2. A testament to the Company's leadership role in the industry is its long list of prominent collaborators, with whom King Ice works to produce special jewelry collections. Collaborators include hip hop icons like Snoop Dogg, as well as mainstream creative companies such as Fox, ESPN and Warner Brothers. King Ice designed, developed and produced the official jewelry collections for major motion pictures such as Batman, Fantastic Beasts and Where to Find Them, and Suicide Squad; and television shows such as Empire.

3. As shown above, King Ice pieces often feature literal sculptural depictions of objects that King Ice designers believe could have cultural resonance within its target audience. Such elements include crosses, angels, and animals. King Ice jewelry is presented in the extravagant "bling" style, which celebrates personal power.

4. King Ice's logo is a lion head—the king of beasts. Shown below left, the lion logo is King Ice's registered trademark and is used extensively, including on the brand's web site and packaging (the "Logo"). An important element of the logo is the lion's "tilted crown"—which King Ice's founders intended as a subtle homage to an

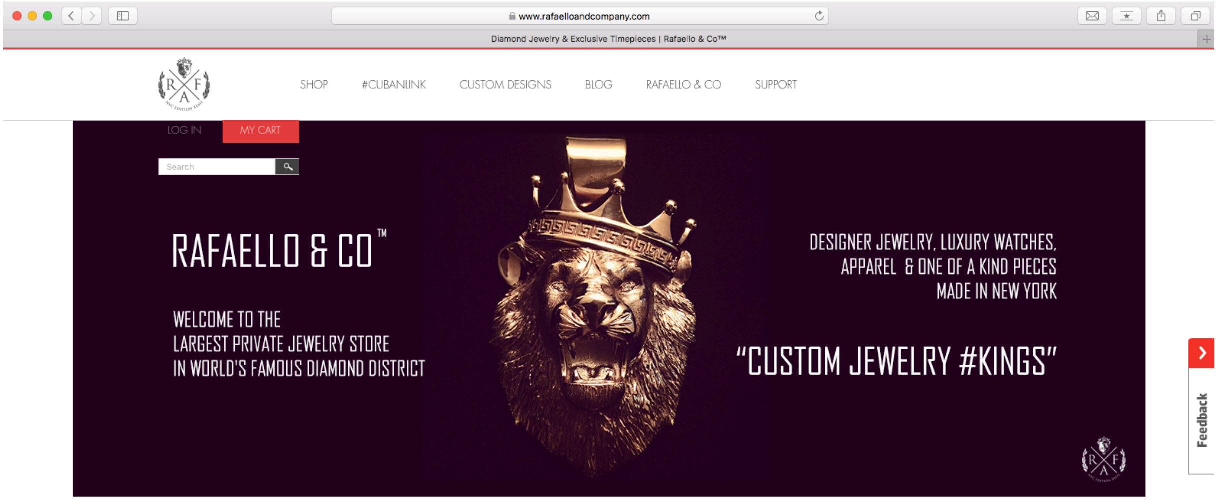
iconic photograph of late rapper The Notorious B.I.G. (entitled the "*King of New York*"). This "Lion with titled crown" imagery is important enough to the brand that it carries through to one of its best known pieces (shown below right): a more realistic three-dimensional lion's head pendant, wearing a titled crown. In that piece, the crown features King Ice's take on the classical "Greek Key" design.[1]. Since 2014, the Company has held the copyright registration for "King Ice Lion" (registration number VAu 1-194-86

5. King Ice recently discovered that Defendant Rafaello & Co. inexplicably sells a knockoff version of King Ice Lion, shown below, retailing for $950.00. Defendant's version is shown here:

[1] Greek Key is a common decorative element in Greek and Roman art, consisting of a decorative border shaped into a repeated motif, featuring straight lines and right angles. While Greek Key patters are almost always constructed from a continuous line, King Ice's is not—featuring discontinuations where the line is usually connected at the top and bottom.

6. Defendant's piece obviously infringes the King Ice Lion copyright because it is strikingly similar—including the tilted crown and even the discontinuous Greek Key ornamentation. Defendant's piece also infringes the King Ice lion trademark and related rights, including trade dress rights, in that consumers would likely be confused as to the source of Defendant's piece—mistakenly believing it was produced by or otherwise affiliated with King Ice.

7. If this literal copying of the King Ice Lion weren't enough, Defendant is also brazenly using the design to promote its goods under its "Rafaello Kings" brand. Incredibly, the image is the first thing one sees at Defendant's web site—prominently displayed on the home page. Even worse, Defendant is selling tee shirts and even socks bearing the image. Shown below are images of the Defendant's website, and apparel produced and sold by Defendant featuring its copy of the King Ice Lion (and including the tilted crown with Greek Key pattern).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IN WORLD'S FAMOUS DIAMOND DISTRICT
DESIGNER JEWELRY, LUXURY WATCHES,
APPAREL & ONE OF A KIND PIECES
MADE IN NEW YORK
"CUSTOM JEWELRY #KINGS"
Feedback

RAFAELLO KINGS

KING
OF
KINGS

KING
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KINGS

8. The founders of King Ice were outraged at Defendant's misappropriation. The company has achieved success through its surprising, original and sometimes tongue-in-cheek designs. Like many companies that depend on intellectual property, free copying threatens King Ice's very existence.

9. As a result, King Ice demanded that Defendant cease sales of the design in question. Reflecting the Wild West nature of this young segment of the jewelry industry, a Rafaello & Co. representative flippantly responded: "What's up guy/gal . . . Unless you can provide any paperwork saying you own the rights to any and every lion with a crown on the head then we regret to inform you that our design is created by us . . . ." Because Defendant also failed to acknowledge copying in subsequent communications between counsel, this lawsuit has become necessary.

JURISDICTION AND VENUE

10. This Court has original subject matter jurisdiction over this action and the claims asserted herein, pursuant to 28 U.S.C. Section 1331 ("federal question jurisdiction") and 1338(a)-(b) ("patent, copyright, trademark and unfair competition jurisdiction") in that this action arises under the laws of the United States and, more specifically, Acts of Congress relating to patents, copyrights, trademarks, and unfair competition. This Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. Section 1367(a)("supplemental jurisdiction") in that they are so related to the federal law intellectual property claims in the action that they form part of the same case or controversy under Article III of the United States Constitution.

11. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1367 because such state law claims arise out of the same case and controversy as the claims in this action, over which the Court exercises original jurisdiction.

12. This Court has personal jurisdiction over Defendant in that Defendant transacts business in the State of California and in this Judicial District, and has

offered for sale the infringing products in this District, including, *inter alia*, sales via Defendant's website.

13. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b)(1)-(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

14. Plaintiff Zenga, Inc. is a California corporation that at all relevant times had its principal place of business in Los Angeles, California.

15. On information and belief, Defendant Rafaello & Company is a New York corporation with its principal executive office at 22 West 47 Street, New York, NY 10036.

16. Plaintiff does not know the true names and capacities of the Defendants sued herein as Does 1 through 10, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of these Defendants when the same has been ascertained. Plaintiff is informed and believes, and thereon alleges, that each fictitiously-named Defendant is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

17. Each defendant is the alter ego of each of the others.

First Claim for Relief for Copyright Infringement

(Against All Defendants)

18. Plaintiff incorporates herein by this reference paragraphs 1 through 17 as if set forth in full in this cause of action.

19. Plaintiff's three-dimensional expression, as shown in the image above, is an original work of authorship and constitutes copyrightable subject matter under the laws of the United States. The image was fixed in a tangible medium of expression, as described above. Plaintiff has registered its three-dimensional expression with the

U.S. Copyright Office—Registration No. VA0001960869. The title of the work is "King Ice Lion."

20. At all times since the creation of the King Ice Lion, Plaintiff has complied with all aspects of the Copyright Acts of 1909 and 1976 and all other laws governing copyright, and secured the exclusive rights and privileges in and to the three-dimensional expression. Plaintiff is the sole owner of all rights, title, and interest in and to the copyright in the three-dimensional expression.

21. Subsequent to Plaintiff's creation of the three-dimensional expression and (on information and belief) with full knowledge of the rights of Plaintiff, Defendant infringed Plaintiff's copyright by copying and reproducing, as described above, the artwork; and selling such copies, and exhibiting such copied images as advertising materials.

22. All of Defendant's acts were performed without the permission, license or consent of Plaintiff.

23. By reason of Defendant's acts of copyright infringement as alleged herein, Plaintiff has suffered and will continue to suffer substantial damage to Plaintiff's businesses in the form of diversion of trade, loss of profits, and a diminishment in the value of Plaintiff's works, rights, and reputation, in part as described above, all in amounts that are not yet ascertainable but not less than the jurisdictional minimum of this court.

24. By reason of its infringement of Plaintiff's copyright as alleged herein, Defendant is liable to Plaintiff for the actual damages incurred by Plaintiff as a result of the infringement, and for any of Defendant's profits directly or indirectly attributable to such infringement.

25. Defendant's copying was willful, as alleged above.

Second Claim for Relief for Falsification of Copyright Management Information in Violation of 17 U.S.C. § 1202

(Against All Defendants)

26. Plaintiff incorporates herein by this reference paragraphs 1 through 25 as if set forth in full in this cause of action.

27. Defendant intentionally falsified copyright management information with the intent to induce, enable, facilitate, or conceal an infringement of Plaintiff's rights under the Copyright Act in violation of 17 U.S.C. § 1202. Specifically, Defendant removed Plaintiff's name—i.e. King Ice—from the copies of Plaintiff's King Ice Lion that Defendant produced and sold.

28. Defendant's removal of copyright management information was made without Plaintiff's knowledge or authority.

29. Defendant's removal of copyright management information was done intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's original work. Defendant also knew, or had reason to know, that such removal and alteration of copyright management information would induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's copyright in its King Ice Lion.

30. Plaintiff has sustained significant injury and monetary damages as a result of Defendant's wrongful acts as hereinabove alleged, and as a result of being involuntarily associated with Defendant. Plaintiff is at present unable to ascertain the full extent of the monetary damages it has suffered by reason of said acts. In order to determine the full extent of such damages, including such profits of Defendant as may be recoverable under 17 U.S.C. § 1203, Plaintiff will require an accounting from Defendant of all monies generated from its wrongful falsification, removal and alteration of copyright management information.

31. In the alternative, Plaintiff may elect to recover statutory damages

pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than $25,000 from each Defendant for each violation of 17 U.S.C. § 1202.

Third Claim for Relief for Unfair Competition Under Section 43(a) of The Lanham Act (15 U.S.C. § 1125(a))

32. Plaintiff incorporates herein by this reference paragraphs 1 through 31 as if set forth in full in this cause of action.

33. As described above, the imagery of a lion wearing a tilted crown, especially together with the Greek Key motif, are signature elements of Plaintiff's goods (the "Signature Elements"). Consumers have come to recognize the Signature Elements as being associated with Plaintiff, and indicating Plaintiff as the source of good bearing them. The goodwill and reputation associated with the signature Elements has continuously grown throughout the general public, and is now well known throughout the United States and the State of California as a source of origin for Plaintiff's jewelry.

34. The Signature Elements of Plaintiff's work are strong, fanciful, non-functional, and distinctive, and inherently distinctive. Through Plaintiff's efforts in marketing and selling their products, the Signature Elements have become distinctive of King Ice products, and have acquired secondary meaning among relevant consumers and the public generally.

35. As alleged above, Defendant produces and sells jewelry improperly incorporating the Signature Elements, which is likely to cause consumers to mistakenly believe that Defendant's products are associated with King Ice—and is designed to create such confusion. Defendant's use of the Signature Elements is likely to cause confusion or mistake or deception of purchasers as to the source of Plaintiff's and/or Defendant's goods. Defendant's conduct will damage Plaintiff's ability to enjoy, maintain and exploit his hard-won brand-recognition and status as an industry leader.

36. In addition, because Defendant's goods mimic the product configuration, design, and/or "packaging" of Plaintiff's goods—which itself is likely to cause consumer confusion as to the source of the goods—Defendant's conduct has violated the Lanham Act under a "trade dress" theory.

37. Although it maintains the highest standards of quality, Plaintiff has no control over the type or quality of the goods provided by Defendant. Goods of low quality, if associated with Plaintiff, damage its reputation. Further, such loss of goodwill with respect to customers and retailers will cause decreased revenues and decreased profits for Plaintiff. In addition, Defendant's use of the Signature Elements diminishes the distinctiveness of Plaintiff's work, negatively affecting its ability to connote a single source of Plaintiff's artwork.

38. By their unauthorized use of the Signature Elements, Defendant has wrongfully appropriated for themselves business, revenue, and goodwill value that properly belongs to Plaintiff, and that Plaintiff has invested time, money, skill, and energy in developing. Defendant has intentionally traded, and infringed upon Plaintiff's work, and the Signature Elements.

39. By virtue of Defendant's acts hereinabove described, Defendant has committed, and is continuing to commit, unlawful, unfair, and fraudulent business acts in violation of, inter alia, 15 U.S.C. § 1125(a).

40. By reason of Defendant's acts of unfair competition as alleged herein, Plaintiff has suffered and will continue to suffer substantial damage to his business in the form of diversion of trade, loss of profits, and a dilution in the value of his rights and reputation, all in amounts which are not yet ascertainable but which are estimated to be not less than the jurisdictional minimum of this court.

41. Defendant's acts of unfair competition in violation of 15 U.S.C. § 1125(a) have caused, and will continue to cause, damage and irreparable harm to Plaintiff (as described above) and are likely to continue unabated, thereby causing

further damage and irreparable harm to Plaintiff, and to the goodwill associated with the valuable and well-known Signature Elements, and Plaintiff's business relationships, unless preliminarily and permanently enjoined and restrained by the Court. Plaintiff has no adequate remedy at law and will suffer irreparable injury if Defendant is allowed to continue to wrongfully continue the conduct herein described.

42. In committing these acts of unfair competition, Defendant acted willfully, wantonly, and recklessly; and with conscious disregard for Plaintiff's rights. Plaintiff is therefore entitled to punitive damages.

43. Plaintiff is entitled to all remedies available under the Lanham Act, including, but not limited to, preliminary and permanent injunctions, compensatory damages, treble damages, disgorgement of profits, costs and attorney's fees.

Fourth Claim for Relief for Trademark Infringement Under Section 32 of the Lanham Act (15 U.S.C. § 1114)

(Against All Defendants)

44. Plaintiff incorporates herein by this reference paragraphs 1 through 43 as if set forth in full in this cause of action.

45. Defendant's actions, as set forth above, constitute infringement of a trademark in violation of the Lanham Act, 15 U.S.C. § 1114.

46. On November 5, 2013, Plaintiff obtained a federal registration for the King Ice Logo: USPTO Registration No. 4428833. Plaintiff's federal registration of the King Ice Logo, and use in commerce are conclusive evidence of Plaintiff's ownership of their mark, and its validity.

47. By their unauthorized use of Plaintiff's trademark, Defendant has wrongfully appropriated for themselves business, revenue, and goodwill value that properly belongs to Plaintiff, and that Plaintiff has invested time, money, skill, and energy in developing. Defendant has intentionally traded, and infringed upon Plaintiff's work, and the Signature Elements. Defendant's wrongful uses of Plaintiff's

trademark is likely to cause confusion as to sponsorship or authorization by Plaintiff, or alternatively, destroy the source-identifying function of Plaintiff's trademark.

48. By reason of Defendant's actions alleged herein, Plaintiff has suffered, and will continue to suffer great damage to its goodwill and reputation; and the loss of sales and profits that it would have received but for Defendant's wrongful use of the Plaintiff's registered trademark. The injury to Plaintiff is and continues to be ongoing and irreparable.

49. The foregoing acts of infringement have been and continue to be deliberate, willful and wanton, making this case exceptional within the meaning of 15 U.S.C. § 1117. An award of monetary damages alone cannot fully compensate Plaintiff for its injuries and Plaintiff lacks an adequate remedy at law.

50. Plaintiff is entitled to all remedies available under the Lanham Act, including, but not limited to, preliminary and permanent injunctions, compensatory damages, treble damages, disgorgement of profits, costs and attorney's fees.

Fifth Claim for Relief for Unfair Competition Under
California Business and Professions Code §§ 17200 et seq.
(Against All Defendants)

51. Plaintiff incorporates herein by this reference paragraphs 1 through 50 as if set forth in full in this cause of action.

52. Defendant, by means of the conduct above, have engaged in, and are engaging in, unlawful, unfair, fraudulent and deceptive business practices under California Business and Professions Code §§ 17200 et seq. These acts and practices undertaken by Defendant violate California Business & Professions Code § 17200 in that they are—as described above—unfair, fraudulent, and/or unlawful. Specifically, without limiting the generality of the foregoing, such acts and practices constitute violations of the Lanham Act, and are and were fraudulent in that: (a) Defendant seeks to deceive consumers regarding the source, quality and origin of Defendant's goods

and Defendant's association with Plaintiff and (b) the general public and trade is likely to be confused regarding the business relationship between Plaintiff and Defendant. Further, without limiting the generality of the foregoing, the harm to Plaintiff and to members of the general public far outweighs the utility of Defendant's practices and, consequently, Defendant's practices constitute an unfair business act or practice within the meaning of Business and Professions Code § 17200.

53. Plaintiff has sustained, and will continue to sustain, serious and irreparable injury to their businesses and reputations, as a direct and proximate result of Defendant's conduct (as described above). Unless Defendant is enjoined by this Court, there is a substantial possibility that they will continue to engage in such unlawful, unfair, and deceptive business practices, for which Plaintiff is without an adequate remedy at law. Accordingly, Plaintiff is entitled to a preliminary injunction and permanent injunction against Defendant and their officers, directors, employees, agents, representatives, affiliates, subsidiaries, distributors, and all persons acting in concert with them, prohibiting them from engaging in further unlawful, unfair and/or fraudulent business practices.

54. As a direct result of Defendant's unlawful, unfair, fraudulent, and deceptive business practices, Defendant has received, and continues to receive, income and profits that they would not have earned but for their unlawful, unfair, and deceptive conduct and Plaintiff is entitled to disgorgement of such funds wrongfully obtained.

55. By reason of Defendant's acts of unfair competition as alleged herein, Plaintiff has suffered and will continue to suffer substantial damage to Plaintiff's business in the form of diversion of trade, loss of profits, and a dilution in the value of their rights and reputation, all in amounts which are not yet ascertainable but which are estimated to be not less than the jurisdictional minimum of this court.

56. Plaintiff is also entitled under the provisions of Business and Professions

Code §17208 to an injunction prohibiting Defendant, and each of them, from engaging in any act, directly or indirectly, which constitute unlawful, unfair, and deceptive business practices.

57. In committing these acts of unfair competition, Defendant acted willfully, wantonly, and recklessly; and with conscious disregard for Plaintiff's rights. Plaintiffs are therefore entitled to punitive damages.

58. Defendant's conduct, if allowed to proceed and continue and/or let stand, will cause irreparable damage to Plaintiff's valuable business relationships and consumer relations and will require Plaintiff to undertake efforts to mitigate damage to such relations, all to Plaintiff's detriment. Further, such mitigation costs will require substantial time, effort, and expenditures by Plaintiff, all to Plaintiff's detriment.

Sixth Claim for Relief for Unfair Competition Under

California Common Law

(Against All Defendants)

59. Plaintiff incorporates herein by this reference paragraphs 1 through 58 as if set forth in full in this cause of action.

60. The above-described conduct of Defendant constitutes unfair competition under the common law of the State of California.

61. As a result of the actions of Defendant, Plaintiff has been damaged in an amount to be proven at trial.

DATED: May 19, 2017 ERIKSON LAW GROUP

By:________/s/____________________

David Erikson

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on its claims on all issues triable by a jury.

DATED: May 19, 2017 ERIKSON LAW GROUP

By:_________/s/_____________________
David Erikson
Attorneys for Plaintiff